



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 22, 1992

Ms. Elaine Piper
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79999

OR92-562

Dear Ms. Piper:

You have submitted two requests for decisions of the Attorney General under the Open Records Act, article 6252-17a, V.T.C.S. The requests, designated ID# 11473 and ID# 13309 respectively, both involve the availability of certain records of the El Paso Police Department. The first request is for information about a case that was closed without prosecution. You advise us that information responsive to the second request includes approximately 75 pages of department documents relating to 12 separate investigation files, some of which relate to the requestor. You seek to withhold various pieces of this information under sections 3(a)(1), 3(a)(8), 3(a)(7), and 3(a)(11) of the Open Records Act.¹

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." This section encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. of the South v. Texas Indus. Accident Bd*, 540 S.W.2d 668 (Tex. 1976). Thus, information may be withheld from the public when (1) it is highly intimate and embarrassing so that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.*; Open Records Decision No. 409 (1984) at 1. However, a governmental body may not assert a person's own privacy interest as a reason for withholding information from that person. V.T.C.S. art. 6252-17a, § 3B(a). Thus, individuals have a special right of access

¹Both requests encompass at least one complaint containing an allegation by a family member that he or she was assaulted by another family member. We are addressing your argument that these complaints and other information relating to the investigations of these complaints should be excepted from public disclosure as a matter of law under sections 3(a)(1) and 3(a)(8) of the Open records Act in an Open Records Decision (our file number RQ-439). Therefore, in this letter we will address only your other grounds for seeking to withhold the information requested.

to private information about themselves held by a governmental body provided that the information is not excepted from public disclosure for some other reason.

Some of the information in Exhibit B of ID# 13309 unrelated to family violence meets the test for common-law privacy set forth in *Industrial Foundation*. Therefore, this information must be withheld from required public disclosure under section 3(a)(1) unless it relates to the requestor. If the information we have marked in Exhibit B of ID# 13309 is about the requestor, however, you may not withhold it under section 3(a)(1).

Section 3(a)(8) of the act excepts from required public disclosure:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

In cases that are still under active investigation, this section excepts from disclosure all information except that generally found on the first page of the offense report. In closed cases, however, the governmental body must demonstrate that release of the information would unduly interfere with law enforcement or prosecution before it can withhold the information under section 3(a)(8). Open Records Decision No. 216 (1978) at 4.

With respect to information designated ID# 13309, you also claim that "identifying numbers assigned by the Police Department" contained on police department documents (Exhibit A), a witness statement from a closed investigation (Exhibit B), various "Case Information Sheets" (Exhibit C), and a witness statement from police department case No. 00 20075C (Exhibit E) are excepted from required public disclosure by section 3(a)(8). You contend that Exhibit A contains numbers that constitute the type of personal history or arrest record information not available to the public under *Houston Chronicle Pub. Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). However, you have not demonstrated, nor is it apparent on its face, that these numbers constitute the kind of information made confidential under *Houston Chronicle*. Accordingly, they must be released. With respect to exhibits B, C, and E, you have not demonstrated that release of these records would unduly interfere with law enforcement or prosecution, nor is it otherwise apparent. See Open Records Decision No. 216. Accordingly, these exhibits may not be withheld from required public disclosure under section 3(a)(8).²

²We also want to note that the information submitted to us for review reflects the victims' addresses at the time of the incidents; it does not reveal any new addresses or telephone numbers. Therefore, this decision should not be interpreted as authorizing or requiring a law enforcement agency to release the address or telephone number of a family-violence victim when that victim has attempted to escape the violence by relocating.

Finally, you claim that the document titled "Family Violence Report" (ID# 11473) and Exhibit C (ID# 13309) are excepted from disclosure by sections 3(a)(7) and 3(a)(11) of the Open Records Act. This office has concluded that the protection of section 3(a)(7) is limited to information that reveals client confidences to an attorney or that reveals the attorney's legal advice. *See* Open Records Decision No. 574 (1990). Information that does not contain legal advice or opinion or reveal client confidences is not protected by section 3(a)(7). *Id.* Section 3(a)(11) protects advice, opinion, or recommendation intended for use in the entity's policy-making or deliberative process, but does not protect facts and written observations of fact. *Id.* at 1-2, Open Records Decision No. 582 (1990).

We have examined the documents submitted to us for review. The "Family Violence Report" contains information that is purely factual and in no way reveals "client confidences." We conclude, therefore, that it may not be withheld from required public disclosure under sections 3(a)(7) and 3(a)(11). With respect to Exhibit C, you have not demonstrated that its release would reveal "client confidences." If a governmental body does not establish how and why an exception applies to requested information, no basis exists on which to pronounce it protected. Open Records Decision No. 363 (1983). Moreover, we conclude that Exhibit C contains no "advice, opinion, or recommendation" and, thus, may not be withheld from public disclosure under sections 3(a)(7) or 3(a)(11)³ of the Open Records Act. Except as indicated above, the requested information in its entirety must be released.

Because case law and prior published open-records decisions resolve a portion of your request, we are addressing this portion in this informal letter ruling rather than in a published open-records decision. If you have questions about this ruling, please refer to OR92-562.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Opinion Committee

SLG/MAR/lmm

Ref.: ID# 13309
ID# 18079

³*See Texas Department of Public Safety v. Gilbreath*, No. 3-92-024-CV (Tex. App.--Austin, Nov. 25, 1992). This decision does not alter the conclusion regarding this information.

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